

CONFIDENTIAL - F. RUSSO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KELLEY AMADEI, et al.,
Plaintiffs,

Civil No. 17 Civ.
(NGG) (VMS)

vs.
KIRSTJEN NIELSEN, et al.,
Defendant.

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* * *CONFIDENTIAL* * *

VIDEOTAPED DEPOSITION OF FRANCIS J. RUSSO
New York, New York
August 30, 2018

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 146015

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2 exactly what she's thinking, but based on the
3 concerns that we were getting, I imagine that
4 she was not aware at the time of everything that
5 was going on.

6 So, on the surface, us just checking
7 IDs of individuals on a flight could have been a
8 concern without knowing the rest of the story.

9 Q. And why is that? Why would that be a
10 concern?

11 MS. OLDS: Objection.

12 You can answer.

13 A. Because we -- we don't normally do
14 that. We don't normally check IDs on a domestic
15 flight.

16 Q. And why don't you normally check IDs
17 on a domestic flight?

18 A. We -- we have enough work on the
19 international side. It's not something that we
20 do on any kind of a basis.

21 Q. Is there any sort of legal prohibition
22 on you checking identification on a domestic
23 flight?

24 MS. OLDS: Objection.

25 A. We don't check domestic flights, and

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2 so I wouldn't know what the legal, you know,
3 basis would be because we don't do it. So I
4 wouldn't recall if there is a legal basis.

5 Q. So you have no basis to know whether
6 it's lawful or not to check identification on a
7 domestic flight?

8 MS. OLDS: Objection.

9 A. No, because we -- we don't check
10 domestic flights, so it's not something that we
11 would normally know. If -- if we had a question
12 about it, we might check with counsel.

13 Q. But you didn't do that in this case?

14 A. No, not because of the time.

15 Q. But since then, have you done that?

16 A. No; and not also because we had no
17 intention of checking IDs on that flight. The
18 intention was to just find this one individual.
19 We were expecting him to identify himself to the
20 crew, and then that would have been the end of
21 it.

22 If he would have been the first person
23 off that flight and we would have identified him
24 as the person on that flight, we wouldn't have
25 checked any more IDs on that flight.

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2 issued by the New York Field Office, do they
3 have those -- the same restrictions, that they
4 need to be not in conflict with headquarters'
5 policies; is that right?

6 A. Yes.

7 Q. And do they also need to be not in
8 conflict with other policies at other Field
9 Offices?

10 A. Generally, yes, most -- the Field
11 Offices know that they should be consistent with
12 each other.

13 Q. And are you aware of any instances in
14 which a New York Field Office policy was
15 inconsistent with another Field Office policy?

16 A. I don't recall any at this time.

17 Q. And what about headquarters, are there
18 any restrictions on the policies that
19 headquarters can issue?

20 A. I'm not sure because I don't work
21 there, but, you know, generally, they -- they
22 would issue policy that is consistent with what
23 the department is asking for as well.

24 Q. And as far as you're aware, there's no
25 policy at headquarters that deals with

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2 identification checks of domestic passengers?

3 A. There is no policy.

4 Q. And there's no policy at the New York
5 Field Office relating to checks of --
6 identification checks of domestic passengers?

7 A. There is no policy.

8 Q. And there is no policy at the JFK Port
9 of Entry relating to identification checks of
10 domestic passengers?

11 A. There is not.

12 Q. And are you aware of any policy
13 relating to identification checks of domestic
14 air passengers anywhere at CBP?

15 A. I am not aware of any policy of
16 domestic checks.

17 Q. Again, I want to make sure my question
18 is clear that it relates to policies pertaining
19 to identification checks of CB -- of passengers
20 on domestic flights?

21 A. There is -- yeah, there is no policy
22 of identification checks of passengers on
23 domestic flights.

24 Q. My question is not whether there's a
25 policy requiring --

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2 A. Right.

3 Q. -- identification checks.

4 A. Uh-huh.

5 Q. Is there a policy anywhere at CBP that
6 you're aware of that relates to the procedures
7 by which officers must follow when they are
8 checking the identification of passengers on
9 domestic flights?

10 A. No, there is not.

11 Q. CBP also has standard operating
12 procedures?

13 A. Yes.

14 Q. Sometimes they're called SOPs?

15 A. Yes.

16 Q. Who issues standard operating
17 procedures at CBP?

18 A. Could be headquarters or the Field
19 Office or the port.

20 Q. So no other entity other than those
21 three within the JFK chain of command?

22 A. I can't think of any right now.

23 Q. And so, in order to issue a standard
24 praying procedure, what's the process that has
25 to take place?

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2 that sentence, because he -- he mentioned
3 international as well. So that sentence was not
4 accurate.

5 So because of that and because of the
6 fact that I just felt the rest of his e-mail
7 implied that there was no SOP, there was no
8 reason to say it.

9 Q. So, just so I understand, is it your
10 testimony that there is in fact an SOP that is
11 followed regarding the identification of
12 arriving passengers traveling internationally?

13 A. Correct.

14 Q. And there is not an SOP that is
15 followed regarding the identification of
16 arriving passengers traveling domestically?

17 A. Correct. We don't have a policy for
18 domestic passengers because we don't identify
19 passengers domestically.

20 Q. And you also don't have an SOP
21 regarding domestic passengers?

22 A. Correct.

23 Q. Then you next say, "The rest of it is
24 good and basically outlines our policy."

25 What did you mean by that?

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2 Q. So, in connection with the incident,
3 you had an e-mail exchange with Jordan Wells; is
4 that right?

5 A. Yes.

6 Q. And he's an attorney with the New York
7 Civil Liberties Union?

8 A. Yes.

9 Q. Is this -- the e-mail at CBP 706, have
10 you seen that before?

11 A. I have.

12 Q. Is that your e-mail communication with
13 Mr. Wells on February 23?

14 A. It is.

15 Q. I'd like you to turn to page CBP 707,
16 and in the middle of the page, there's an e-mail
17 from you on February 23 at 12:21.

18 Do you see that?

19 A. I do.

20 Q. And you write to Mr. Wells and say,
21 "Jordan, I'm not available for a call right now,
22 but I can assure you that the story has nothing
23 to do with anything you might be thinking. We
24 were simply assisting our sister agency in
25 tracking down one individual. Unfortunately,

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2 the story is being sensationalized and people
3 are jumping to unnecessary conclusions."

4 What were the unnecessary conclusions
5 that you were talking about in this e-mail?

6 A. This occurrence was on the heels of
7 the executive order and a new administration,
8 and some of the commentary indicated that this
9 must be new orders from the new administration.

10 Q. But that was not the case?

11 A. It was not the case.

12 Q. If you go to page 706, at the very top
13 of the page, there's an e-mail from you on
14 February 23 at 3:33 p.m.

15 Do you see that?

16 A. I do.

17 Q. You -- this is you writing to Mr.
18 Wells. You say, "Jordan - We do this every day.
19 Someone took a picture and put it on Twitter.
20 That's what led to the hysteria."

21 What did you mean "we do this every
22 day"?

23 A. So I was responding specifically to
24 the last part of his comment underneath where he
25 says, you know, "many, many everyday people with

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2 prior removal orders." There are many, many
3 everyday people with prior removal orders, and
4 with respect to that, we, every day, are
5 involved in refusing entry to individuals on the
6 international side, and so that's something that
7 happens every day. Beyond that, I was also
8 referring to the fact that we help our partners
9 every day.

10 So just trying to -- to make him
11 understand that this was not something -- this
12 was not part of something resulting from the new
13 administration. This is what we do every day,
14 help our partners and get involved in people who
15 we refuse entry into the United States.

16 Q. So is there anything else that you
17 were referring to other than, when you said "we
18 do this every day," other than dealing with
19 folks subject to removal orders and helping
20 partners?

21 A. No.

22 Q. So is part of helping partners
23 sometimes identifying a person of interest on a
24 flight?

25 A. Not so much identifying, but